

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODG) NO.239 OF 2018

Aarti Pandey Ahir.

...Appellant

Versus

Reliance Infrastructure Ltd. & Anr.

...Respondents

Mr.VR.Patil, for the Applicant/Appellant.

Mr.S.U.Kamdar, Senior Advocate with Mr.Karan Bhosale, Mr.D.J.Kakalia and Mr.Paresh Patkar i/b. Mull & Mulla & Craigie Blunt & Caroe, for Respondent No.1.

Mr.R.Y.Sirsikar & Sandeep Patil, for Respondent No.2-BMC

CORAM: **NARESH H.PATIL AND**
 G.S.KULKARNI, JJ

DATED: **11th June, 2018**

PC.:

1. Heard the learned Counsel for the parties. The appellant who is not a party before the learned Single Judge in Execution Application No.237 of 2014 in Miscellaneous Application No.1072 of 1973 has filed this appeal challenging the order dated 9 February 2018 passed by the learned Single Judge rejecting her intervention in the said execution

proceedings and rejecting her contention to stay execution of the orders of this Court passed in Miscellaneous Application No.1072 of 1973, in respect of final plot no.102 equivalent to Survey No.109. The appellant Ms.Aarti Pandey Ahir who has stated herself to be a qualified lawyer claims that her great-grandfather, thereafter her grandfather and her father (for short 'the Pandey family') has right in respect of final plot no.102.

2. The plot in question was the part of the town planning scheme framed under the provisions of the erstwhile Bombay Town Planning Act,1954 as Scheme No.5 which was made effective from 1 August 1959. Under the said scheme, final plot no.102 and 103 having total area 1483 sq.yards were initially allotted to Bombay Suburban Electric Supply Ltd. (BSES). The BSES is in possession of plot no.103 since 1969 which is not in dispute. The claim of the appellant is that in respect of final plot no.102 admeasuring 874 sq.yards, the Pandey family was in physical possession and had constructed structures on it and allotted those structures to various persons. It appears that all these structures are unauthorised. The BSES had approached this Court in a

Writ Petition (Miscellaneous Petition No.1072 of 1973) which was disposed of by the learned Single Judge of this Court (Pendse J.) by a judgment dated 28 June 1979, whereby following the decision of the Supreme Court in “*Municipal Corporation of Greater Mumbai vs. Advanced Builders (India) Pvt.Ltd.*”¹ and various other decisions, it was held that it was a statutory duty of the Municipal Corporation under the town planning scheme to put allottees of the plots in actual possession. In the said judgment, the Court also repelled the pleas as made on behalf of the Pandey family. The Court observed “*whatever rights the third respondent may have in this final plot, the same came to an end on 1st August 1959 in view of the provisions of Section 53(b) of the Bombay Town Planning Act, 1954 ...*” Accordingly, the Court issued a writ of mandamus and directed the Corporation to take necessary steps under the provisions of law to put the petitioners therein (BSES) in possession of the final plot allotted to them. A Special Leave Petition against the said order was also dismissed by the Supreme Court on 8 February 1982. However, the Supreme Court left open, for a decision in civil proceedings, all questions as to the claim to title by adverse possession.

1 75 BLR 355

3. Accordingly the Pandey family had filed a Civil Suit no.5134 of 1976 in the City Civil Court at Mumbai, claiming title to the said land by adverse possession. This suit was dismissed by the Court on 30 June 1993. A First Appeal was filed in this Court (First Appeal No.553 of 1997) was also disposed of by this Court by an elaborate judgment dated 5 December 2008. The Court repelled contentions of the Pandey family of acquiring any ownership rights on the said land by adverse or hostile possession, as asserted on behalf of the Pandey family and observed that in fact the Pandey family was asserting mutually destructive pleas, inasmuch as on one hand it was pleaded that the Pandey family had become tenant of the original owner Mr.Wadiwalla and at the same time they claimed ownership by adverse possession. Again the judgment of this Court in the First Appeal was challenged before the Supreme Court by the Pandey family in Special Leave Petition (C) No.10918 of 2009, which was heard with Special Leave Petition (C) No.6148 of 2009 filed by some hutment dwellers. Both these Special Leave Petitions were dismissed by the Supreme Court by an order dated 11 May 2009.

4. On the above background and nearly after forty years of the

decision of this Court in the writ petition filed by BSES had attained finality, the appellant who does not have a semblance of a right much less any independent right, intervened in the execution proceedings before the learned Single Judge again asserting a right, title and interest of the Pandey family on plot No.102 and contended that the decree ought not to be executed in respect of plot no.102 as there are other families who are occupying structures situated on the said plot.

5. The learned Single Judge considering all the pleas as advanced by the appellant on behalf of the Pandey family has held that the issue that the Pandey family had no legal right in respect of plot no.102, had attained finality, in view of the previous rounds of litigation, which had reached the Supreme Court and resulted into dismissal of the Special Leave Petitions in which the contention of the Pandey family being rejected by the Supreme Court. Despite this clear position, the appellant pleaded before the learned Single Judge as also before us that her claims have not been adjudicated. We are surprised as to how such a plea can be raised after so many years and more particularly when it had failed in the previous proceedings as noted above. The principle of res judicata /

constructive res judicata surely applies. Such a plea affecting the sanctity of the judicial orders which have attained finality can neither be imagined much less accepted.

6. The assertion as made on behalf of the appellant is nothing but a futile attempt to stall the execution of the orders as passed by this Court in the year 1973.

7. We see no reason to interfere in the impugned order. The appeal is hopelessly sans merit. It is accordingly rejected. No costs.

(G.S.KULKARNI, J.)

(NARESH H. PATIL, J.)